Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
----------X
FOX VARIAN,

Plaintiff,

-against-

KENNETH EINHORN, PhD, CARMEL PSYCHOLOGICAL ASSOCIATES, P.C., SIMON H. CHIN, M.D. and CAREMOUNT MEDICAL, P.C.
----------X

EXPERT AFFIRMATION

Index No.: 61150/2023

REDACTED M.D. [1], a physician duly licensed to practice medicine in New York, hereby affirms under penalties of perjury pursuant to the laws of New York, which may include fine or imprisonment, that the foregoing is true, and may be used in an action or proceeding in a court of law:

1. I am a physician duly licensed to practice medicine in the State of New York. I graduated from New York Medical College in 1991. Thereafter, I completed a residency in general surgery at St. Vincent's Hospital/New York Medical College between 1991 and 1996. I subsequently completed a residency in plastic surgery at The Cleveland Clinic Foundation between 1996 and 1998. I then completed a cosmetic surgery fellowship in Miami in 1998. I am board certified in plastic surgery and have been since 2000. I currently maintain my own plastic surgery practice in New York, New York, and maintain privileges at several hospitals in New York City.

[1] The name of this expert witness is redacted in accordance with CPLR § 3101(d)(1), which provides, "In an action for medical, dental or podiatric malpractice, a party, in responding to a request, may omit the names of medical, dental or podiatric experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph." If the Court requires, plaintiff will provide an unredacted affirmation for an *in camera* inspection. *See Marano v. Mercy Hosp.*, 241 A.D.2d 48 (2d Dep't 1998); *see also*, *Cerney v. Williams*, 32 A.D.3d 881 (2d Dep't 2006).

2. I am familiar with treatment of patients with body dysmorphia and gender dysphoria who wish to undergo gender reassignment surgery. My practice includes gender reassignment procedures, including double mastectomies, sometimes referred to as "top surgery" for persons seeking to transition from female to male. I am fully familiar with the role of plastic surgeons in performance of such surgeries and the standard of care applicable to treatment of such patients. I am also familiar with the interactions between the plastic surgeon and mental health professional treating the patient in connection with such surgeries, and the standard of care for same. I am familiar with the standard of care for obtaining informed consent to gender reassignment surgery, including the collaboration between the plastic surgeon and mental health provider to ensure the patient is advised of all and psychological risks, benefits and alternatives to surgery.

3. This is a medical malpractice action for negligent treatment of the then 16 year old plaintiff and improper performance of gender reassignment surgery on her. It is my opinion that it was a departure from the standard of care for Dr. Chin to perform gender reassignment surgery on her when she presented with a diagnosis of body dysmorphia, which is not an indication for surgery. It is my further opinion that, even if this teenage patient had gender dysphoria (i.e. the necessary diagnosis for gender reassignment surgery), Dr. Chin should have declined to perform surgery upon her because (i) per the standard of care, a plastic surgeon should not operate on an adolescent seeking gender reassignment surgery absent a compelling reason, which is not present in this case; (ii) the patient had not attempted several reversible and partially reversible interventions, which is a prerequisite to surgery; and (iii) the patient had not lived in the desired gender publicly for a sufficient period of time prior to surgery. It is my opinion that it was a departure from the standard of care for Dr. Chin to perform surgery based upon the inadequate

letter of support that he received from the patient's psychologist Dr. Einhorn, the lack of adequate communication with the patient's mental health team, the inadequate communication with the patient's parents, and in the absence of a diagnosis of gender dysphoria. It is also my opinion that Dr. Chin failed to ensure that the patient was informed of the risks, benefits and alternatives to surgical intervention, and failed to have extensive conversations with the patient, her mother and her psychologist regarding the possibility that surgery would not alleviate her symptoms of gender dysphoria or that it could lead to regret later if the gender dysphoria did not continue into adulthood.

4. Each and every opinion provided in this affirmation is stated with a reasonable degree of medical certainty. In reaching the opinions stated herein, I relied upon my review of the pleadings, treatment records including but not limited to the records of defendant surgeon Dr. Simon Chin, the letter of support by Dr. Einhorn, and deposition testimony, as well as my education, training and decades of experience as a plastic surgeon. I also reviewed the affirmation of defendant's plastic surgery expert Dr. Joseph M. Serletti dated October 29, 2024 (hereafter "Serletti Aff.").

PERTINENT FACTS

5. Treatment of a patient with suspected gender dysphoria is a collaborative effort between her mental health providers and medical doctors. In this case, Ms. Varian was being treated by psychologist Dr. Einhorn prior to commencement of her treatment with Dr. Chin and a brief overview of her mental health care is therefore relevant.

6. Defendant Dr. Kenneth Einhorn began treating the plaintiff/patient Fox Varian in 2017 when she was 14 years of age for numerous issues unrelated to gender dysmorphia or body

dysphoria. He met weekly with Ms. Varian, beginning June 23, 2017, to discuss issues she was experiencing at school and home.

7. Ms. Varian had been diagnosed with autism spectrum disorder as of 2017. I nearly 2018, she continued to isolate and described a lot of anxiety related to attending school. She was exploring alternative schooling options and elected not to attend public high school.

8. Per Dr. Einhorn's records, on November 24, 2018, Ms. Varian first expressed that she may wish to change her name to a masculine one. This was the first documented instance of Ms. Varian discussing this with her psychologist.

9. On December 22, 2018, Ms. Varian began discussing her sexuality with Dr. Einhorn and it seemed she wanted to explore possibly transitioning to male. She wanted to wear a binder (which is a device that gives the appearance of a flat chest) and obtain a male haircut, but she was still using female pronouns. Her mother, Clare Deacon, was not supportive of these changes, and continued to express doubts for the next year. Ms. Varian rarely communicated with her father.

10. In December 2018, Ms. Varian got a male haircut, though was still described as "very ambiguous", having not yet committed to a male identity. She continued to see Dr. Einhorn weekly for treatment of her anxiety and depression.

11. In January 2019, she began using different pronouns, requesting to be referred to as "he" or "they". She still did not want to discuss these changes with her mother, who continued to be unsupportive of her transitioning to male. She was still known as female to friends and acquaintances, and thus still had not transitioned to living fully and publicly as a male.

12. In February of 2019, Ms. Varian changed her name again to "Rowan" and confirmed use of the pronoun "he". Ms. Varian also asked unspecified "others" to recognize her new pronoun, though there are no details regarding who or where these new pronouns were being

used or made known, and her school attendance was problematic. She had not yet committed to fully living as a male at this point, as there are references to anxiety in failing to inform her karate teacher and several friends that she fully transitioned to male. Per Dr. Einhorn, as of February 23, 2019, "Rowan's desire to avoid attention [went] against exactly what happens when you transition and he has to embrace it and use a non-emotive line to correct people as needed."

13. In March 2019, the issue of gender reaffirming surgery was broached with Dr. Einhorn. On March 16, 2019, Ms. Varian discussed "top surgery" (i.e. a double mastectomy to remove one's breasts for purposes of gender reassignment). The plan was for her to learn the necessary steps to become a candidate for such surgery.

14. With respect to treatment of transgender patients and those with suspected gender dysphoria, an international organization known as the World Professional Association for Transgender Health (known as "WPATH") authors a document known as "Standards of Care for the Health of Transsexual, Transgender and Gender Non-Conforming People." This document sets for the standard of care for treatment of transgender people, including adolescents, such as Ms. Varian. These guidelines are widely relied upon by psychologists and plastic surgeons contemplating gender reassignment surgery for a patient with gender dysphoria.

15. Per the standards of care in effect at that time, before an adolescent became a candidate for gender reassignment surgery, the patient should explore fully reversible interventions (i.e. use of GnRH analogs to suppress puberty) and partially reversible interventions (such as hormone therapy). Additionally, before being recommended for surgery, the adolescent patient should also be living publicly as the desired gender for an extensive period of time, usually a year or more. Despite these standards, it does not appear that Ms. Varian was recommended GnRH analogs. Ms. Varian refused hormone therapy. It is also well documented that she continued to

struggle to identify fully and publicly as a male. Thus per the standard of care, she should not have been a candidate for irreversible intervention, i.e. a gender reassignment surgery.

16. As of April 13, 2019, it was noted money and family dynamics were "barriers to name change and top surgery". Her mother continued to be unsupportive of surgery. Importantly, Dr. Einhorn stated that he believed some of Ms. Varian's feelings and behaviors were related to "spectrum issues and not obsession over body dysphoria", but indicated they were going to do "everything they can" to change her name. Notwithstanding, Dr. Einhorn referred her to Dr. Chin for a surgical consult and continued efforts to convince Ms. Varian's mother to consent to the procedure.

17. Ms. Varian continued to make slow progress at school in April 2019, though she came out as male to her karate instructor, which was seen as a significant step. Thus, as late as April 2019, she was still not living fully as male.

18. As of May 25, 2019, Dr. Einhorn discussed "current research on transgender transitions" with Ms. Varian's mother. According to Ms. Deacon, Dr. Einhorn also informed her that her daughter may commit suicide if she continued to withhold consent to surgery. During his testimony in this case, Dr. Einhorn admitted he never documented that Ms. Varian had suicidal tendencies prior to her surgery, and he never believed she was truly suicidal.

19. As of July 20, 2019, Ms. Varian had active diagnoses of anxiety and body dysmorphia, but not gender dysphoria. Ms. Varian continue to work on her emotional regulation skills. On July 27, 2019, Dr. Einhorn noted that mom was still against surgery, and suggested "learning to calm might help create an argument for her to have the surgery sooner".

20. In August 2019, Dr. Einhorn continued to diagnose Ms. Varian with body-dysmorphia, and her mother continued to object to surgery. Homeschooling was again being

pursued which is significant as it did not require Ms. Varian to live publicly as the desired sex (male). As of September 2019, Ms. Varian opted out of public high school and was again homeschooled.

21. Ms. Varian learned that many plastic surgeons performing gender reaffirming surgery had long wait lists. Dr. Einhorn therefore recommended that Ms. Varian see plastic surgeon and defendant in this case Dr. Simon Chin.

22. On October 14, 2019, Dr. Einhorn provided a letter of support for top surgery with Dr. Chin. Notably absent from the letter is any discussion of the parents' opinion or reference to discussion between them and Dr. Einhorn about the procedure. In the letter, Dr. Einhorn noted diagnoses of autism spectrum disorder, social phobia and body dysmorphic disorder, which are red flags to a plastic surgeon considering possible performance of gender reassignment surgery. Critically, there is no diagnosis of gender dysphoria in the letter. She did not attempt hormone therapy prior to issuance of this letter of support. She did not use GnRH analogues. She was not required to live fully and publicly as the desired gender for an entire year.

23. Plaintiff's mother testified that she was not in agreement with gender reassignment surgery. However, she ultimately agreed to the surgery after Dr. Einhorn informed her that Ms. Varian would commit suicide if she did not have the surgery.

24. Ms. Varian first saw Dr. Chin on October 15, 2019. Dr. Chin described plaintiff as a 16-year-old biological female who wanted a double mastectomy "to align himself sexually." Dr. Chin incorrectly noted that Ms. Varian had been of the opinion she wanted to transition for about 3-4 years, and had the support of her parents.

25. Upon examination, Dr. Chin described B cup breasts with a significant amount of skin and fibrous tissue. Dr. Chin discussed treatment options with plaintiff, which included a

possible two-staged process, with liposuction and possible skin resection, versus a one-stage process, which was a short scar breast reduction. Dr. Chin further documented the informed consent discussion as follows: "Risks and benefits explained including bleeding, infection, seroma, hematoma, hypertrophic scarring, keloiding, suture abscess, asymmetry, need for further surgery, wound separation, prolonged healing, need for activity restriction, DVT [deep vein thrombosis], PE [pulmonary embolism]." The informed consent discussion did not include the risks or alternatives relative to treatment of her gender dysphoria, nor was Dr. Einhorn involved to explain them.

26. The plaintiff returned to Dr. Chin for a second pre-operative visit on November 4, 2019. Per Dr. Chin's testimony, the purpose of requiring a patient to return for a second pre-operative visit is to ensure that they wish to proceed with the surgery. Dr. Chin also testified that he does not rely upon the diagnosis by the mental health professional, and that he independently assesses the patient to determine if he agrees with the diagnosis indicated for the patient's surgery. Based upon his two pre-operative visits, Dr. Chin mistakenly believed that the minor plaintiff Ms. Varian was an appropriate candidate for top surgery.

27. When questioned about the absence of a gender dysphoria diagnosis, Dr. Chin explained that it was not necessary because, essentially, he knew what Dr. Einhorn meant and had done his own assessment of the patient. Dr. Chin testified that he is well versed in the mental health conditions that lead to gender reassignment surgery based upon his own family's past experiences. However, he is not a mental health provider—he is a plastic surgeon.

28. Dr. Chin believed that the letter of support by Dr. Einhorn was satisfactory and the surgery was indicated, despite the fact that the patient had not undergone reversible and partially reversible interventions, or been required to live fully and openly as a male for at least a year.

29. Dr. Simon Chin performed the double mastectomy on plaintiff Fox Varian at Northern Westchester Hospital on December 16, 2019. The preoperative diagnosis was gender reassignment. The procedure performed was a bilateral shot scar breast reduction for gender reassignment. Per the operative report, Dr. Chin advised the patient of the "risks and benefits of the procedure", and all of the risks explained were physical in nature. None of the risks noted including warning the patient of the effect of surgery on her psychological condition (i.e. that it may not resolve her gender dysphoria), or her potential for future regret.

30. Following the procedure, Ms. Varian had excess skin which necessitated a second surgery that was ultimately performed by non-party surgeon Dr. Laurel Chandler in January 2021. Subsequently, Ms. Varian lived as a male for several years, until she reached adulthood and began to experience regret. She therefore transitioned back to a female identity.

OPINIONS

31. It is my opinion to a reasonable degree of medical certainty that the defendants, and in particular defendant surgeon Dr. Chin, departed from the standard of care in treatment of the plaintiff Fox Varian and by performing surgery on her which was not indicated or appropriate.

32. At the outset, Dr. Chin failed to obtain an adequate history from the patient, and failed to appreciate her pre-existing psychological conditions, namely her autism, depression and social phobia diagnoses. The combination of these diagnoses, with a reported diagnosis of body dysmorphia where the patient was requesting "top surgery" should have prompted Dr. Chin to further investigate the patient's cognitive abilities, psychological diagnoses, social history and aptitude. If he had taken a complete medical and social history, he would have learned that the patient was having difficulty with transitions due to her autism, difficulty controlling her emotions with ongoing skills therapy, and avoided social situations. These factors tend to make performance

of gender reassignment surgery more risky and increase the likelihood risk that it will not alleviate feelings associated with gender dysphoria.

33. At the time of Ms. Varian's first encounter with Dr. Chin, there were numerous factors indicating that she was not a proper candidate for gender reassignment surgery, all of which Dr. Chin overlooked. She had not lived as a male fully and publicly for a year or more. She had not attempted several fully reversible or partially reversible interventions, including GnRH analogues, progestins or other medications to slow or suppress puberty. Ms. Varian also refused hormone therapy. She could not tolerate binding. The standard of care generally requires that a patient undertake these non-surgical treatment modalities before pursuing a permanent surgical intervention.

34. Dr. Chin departed from the standard of care when he neglected to speak to the referring and treating psychologist, Dr. Einhorn about the patient's diagnosis and these pre-requisites to surgery. By Dr. Chin's own admission, he never spoke to Dr. Einhorn about the patient.

35. Dr. Chin departed from the standard of care in accepting a woefully inadequate letter of support from Ms. Varian's psychologist, which did not even include the proper diagnosis of gender dysphoria that would warrant gender reassignment surgery. The letter of support from Dr. Einhorn referenced several concerning diagnoses (autism, social phobia and body dysmorphia), but none of these are treated with gender reassignment surgery. Simply stated, the standard of care requires that a patient be diagnosed with gender dysphoria, not "body dysmorphia", to proceed with a gender reassignment surgery, and that diagnosis was clearly missing from the psychiatric assessment. It is nowhere in Dr. Einhorn's records, and nowhere in the letter of support. Body dysmorphia and gender dysphoria are distinctly different conditions

with different acceptable treatment modalities. Per the testimony of plaintiff's psychologist, which is also submitted in opposition to this motion, body dysmorphia is a mental health condition where a patient will obsess over a minor or non-existent flaw in their physical appearance. It need not be gender related at all. Surgery is not a treatment for body dysmorphia.

36. Dr. Chin testified that he essentially interpreted the letter of support to mean that the patient had gender dysphoria, and felt comfortable moving forward with surgery because he performed his own assessment of the patient and concluded that she suffered from gender dysphoria requiring a double mastectomy. This is grossly unacceptable and a departure from the standard of care. The plastic surgeon should speak to and rely upon the mental health professional to make the appropriate diagnosis of gender dysphoria. A plastic surgeon is not trained in mental health counseling or diagnosing mental health conditions. At the very least, Dr. Chin should have contacted Dr. Einhorn to ensure that the diagnosis was in fact gender dysphoria. If it was not, and the diagnosis was in fact body dysmorphia, then the patient should have been denied surgery by Dr. Chin. Failure to confirm the correct diagnosis and substitution of his own judgment in place of the treating mental health professional was a departure from the standard of care, which resulted in performance of an incorrect and unnecessary surgery on the then teenage plaintiff.

37. Even if the letter from Dr. Einhorn included a diagnosis of gender dysphoria, the standard of care requires that the surgeon have a discussion with the referring psychologist to ensure there was a complete psychiatric work up. Dr. Chin admits that he did not speak to Dr. Einhorn, which is another departure from the standard of care and communication breakdown which negatively affected the outcome in this case.

38. In addition to receiving a letter of support, the plastic surgeon should confirm that the patient has lived in her affirmed gender for a sufficient length of time prior to surgery, which

in this case should have been over 1 year. The surgeon also should ensure that the patient has undergone hormone therapy first, as it is required by the standard of care before proceeding with a permanent surgical intervention. Dr. Chin failed to do so in this case, thereby failing to obtain an adequate history for the patient. If he had spoken to Ms. Varian's psychologist, he would have learned that she did not live fully and publicly as male for a year, was reclusive and homeschooled and refused to undergo any reversible or semi-reversible steps to transitioning. If he had obtained this information, and learned of Ms. Varian's failure to undergo and/or tolerate these less invasive treatment methods, then the standard of care would require Dr. Chin to decline performance of the surgery.

39. Obtaining informed consent to gender affirming surgery on an adolescent is a multi-disciplinary process and collective effort involving both the plastic surgeon and psychologist (or other mental health professionals involved in the patient's care). The minor patient must ascent to the procedure, and the parent or legal guardian must execute a consent on their behalf. However, the duty to impart the risks, benefits and alternatives on the patient and guardian is shared by both the surgeon and the psychologist. The surgeon is obligated to explain all medical risks, benefits and alternatives, including the option to delay or forego surgery. He is also obligated to impress upon the patient the permanency and risk of potential future regret if the gender dysphoria does not continue into adulthood, which can happen and did happen here. The psychologist is also required to inform the patient of the risks, benefits and alternatives, including the risk that surgery will not alleviate the patient's gender dysphoria and/or the fact that gender dysphoria may not continue into adulthood leading to regret. Dr. Chin documents that he informed Ms. Varian of the "risk and benefits" of surgery, specifically noting that he advised the patient of scarring, bleeding, infection, seroma, hematoma, hypertrophic scarring, keloiding, suture abscess, asymmetry, need

for further surgery, wound separation, prolonged healing, activity restriction, DVT, and PE. Dr. Chin did not include a discussion of the psychological aspects of the surgery, and did not include Dr. Einhorn in the consent discussion to address the risks that the patient's psychological symptoms may not be resolved by surgery. This was a departure from the standard of care by Dr. Chin. While he testified that he discussed the permanency of the procedure with the patient, Dr. Chin is not a psychologist or mental health professional and thus lacks the adequate training to inform the patient of the psychological risks associated with the surgery, including the risk that it may not alleviate symptoms of gender dysphoria or resolve issues of misgendering. Consent also requires a two way conversation with the patient regarding their expectations from the surgery, which does not seem to have occurred here. Additionally, if he had adequate conversations with Dr. Einhorn and Ms. Deacon, he likely would have also learned that Ms. Deacon was only consenting to the surgery for fear her daughter would commit suicide otherwise.

40. It is also my opinion that Dr. Chin departed from the standard of care in performance of the double mastectomies on December 16, 2019. Dr. Chin failed to remove adequate skin and breast tissue, thereby making a revision surgery unavoidable. Dr. Chin failed to remove adequate tissue on the left lower breast on the right side, left excess tissue in the right supraareolar area and excess tissue in the left inferior breast. If Dr. Chin removed the appropriate amount of skin and breast tissue during the initial surgery, the revision surgery could have been avoided. While revision surgery is always a risk, in this case, it could have been avoided if not for the improper surgical technique and judgment of Dr. Chin.

41. I disagree with defense expert Dr. Joseph Serletti's opinion that Dr. Chin and Caremount Medical PC did not depart from the standard of care, and that Dr. Chin "appropriately carried out his role as plaintiff's plastic surgeon." Serletti Aff. ¶33-34. Dr. Chin never should have

performed top surgery on Ms. Varian. Dr. Chin accepted a woefully inadequate letter of support from Dr. Einhorn which did not include a diagnosis of gender dysphoria. He did not call Dr. Einhorn to discuss the patient's mental health diagnoses. Dr. Chin did not ensure that the patient underwent the required less invasive treatments prior to proceeding surgically. He did not ensure that the patient understood the effect of the surgery on her psychological conditions. Dr. Chin also performed his own assessment of the patient's mental health and made an assumption that she had gender dysphoria when he is not trained as a psychologist or psychiatrist. These are some of the many ways that Dr. Chin departed from the standard of care in treating Ms. Varian.

42. I disagree with the statement by defendant's expert that "plaintiff's allegation that the top surgery was contraindicated and should not have been performed by Dr. Chin because the plaintiff did not have gender dysmorphia is without merit." Serletti Aff. ¶35. Defendant's expert makes this statement in reliance on the letter of support Dr. Chin received from Dr. Einhorn, but as stated in detail above, this letter of support (sometimes referred to as a behavioral health clearance) was woefully inadequate, did not include a diagnosis of gender dysphoria, and included numerous contraindications to the surgery (autism, social phobia, anxiety, body dysmorphia). It is irrelevant that the plaintiff saw Dr. Einhorn for 2 ½ years before having surgery because the majority of that treatment related to school and home issues—not gender issues. If Dr. Chin contacted Dr. Einhorn and discussed the plaintiff's case, as required by the standard of care, he would have learned she was not a surgical candidate. The letter also did not indicate that Ms. Varian underwent less invasive treatment measures, such as hormones, and failed to explicitly state that she was living fully and openly as a male for at least 1 year—because she hadn't. Operating on a patient without a mental health professional at least first diagnosing gender dysmorphia is a clear departure from the standard of care. Dr. Chin was not a mental health professional—he is a plastic

surgeon. He is not qualified to substitute his own judgment regarding whether or not the patient had gender dysphoria to justify proceeding with a gender reassignment surgery. I disagree that with defendant's expert that "Dr. Einhorn's letter clearly documents that the plaintiff had gender dysmorphia"—he is not a psychologist and the diagnosis is clearly absent from the letter. Serletti Aff. ¶35.

43. I disagree with the opinion of defendant's expert that it was somehow appropriate for Dr. Einhorn to list the incorrect diagnosis of body dysmorphia to satisfy "billing" requirements. Serletti Aff. ¶36. Body dysmorphia and gender dysphoria are two entirely different conditions—and surgery is not a treatment option for body dysmorphia. Also, defendant's expert improperly speculates that "had Dr. Chin called Dr. Einhorn prior to surgery, Dr. Einhorn would have told him the diagnosis was gender dysmorphia." Serletti Aff. ¶36. First, we know there was no conversation between Dr. Chin and Dr. Einhorn which itself is a departure from the standard of care, so this statement is pure speculation. Additionally, Dr. Einhorn's notes indicate that he suspected some of her issues were related to her autism, not struggles with her gender identity. It is likely that a meeting between the two providers could have yielded an entirely different outcome.

44. I also disagree with defendant's expert that "it was appropriate and in accordance with the standard of care for Dr. Chin to defer to Dr. Einhorn in this regard", presumably referring to the diagnosis of body dysmorphia. Serletti Aff. ¶36. First, there was no diagnosis of gender dysmorphia, and nothing to "defer" to Dr. Einhorn in that regard. Additionally, Dr. Chin contradicts his own expert on this point, as Dr. Chin testified that he performed his own assessment of the patient to ensure she had gender dysmorphia, despite his status as a plastic surgeon, which was a departure from the standard of care.

45. I disagree with defendant's expert that "it was perfectly appropriate for Dr. Chin to defer to Dr. Einhorn's expertise and medical judgment as a licensed psychologist that top surgery was indicated since Dr. Einhorn was the appropriate specialist, through his education and training, to come to this conclusion." Serletti Aff. ¶37. First, Dr. Chin contradicts his own expert on this point. Dr. Chin testified that he performed an assessment of the patient and decided she had gender dysmorphia. Thus the statement by defendant's expert is factually incorrect in this case. Also, Dr. Einhorn never diagnosed gender dysmorphia and there was nothing to "defer" to Dr. Einhorn in the absence of the necessary diagnosis for surgery.

46. I disagree that Dr. Chin "went above and beyond the standard of care in corroborating the plaintiff did indeed have gender dysmorphia." Serletti Aff. ¶38. There was no gender dysmorphia diagnosis and nothing to "corroborate." Plus, Dr. Chin is not a trained mental health professional. He is not qualified to make or confirm a diagnosis of gender dysmorphia. Per the testimony of the psychologists in this case, such diagnosis requires treatment with a mental health professional over an extensive period of time—it cannot be made in 2 pre-surgical visits which were the only encounters Ms. Varian had with Dr. Chin before he removed her breasts. None of the criteria discussed by defendant's expert as "corroborating" that plaintiff was "gender dysmorphic" is recognized as contributory to making this diagnosis. In fact, it is improper for the defendant's expert, as a plastic surgeon, to attempt to confirm this diagnosis at all as it is outside his area of expertise. Additionally, adding a second pre-operative visit was not a viable substitute for contacting and discussing the patient's case with her psychologist.

47. I again disagree with defendant's expert that he is qualified to make a diagnosis of gender dysphoria because he "performs on average, two top surgeries per month." Serletti Aff.

¶39. Nowehere in his credentials does it including training or licensure as a mental health professional.

48. I disagree with defendant's expert opinion that the "testimony established she had gender dysmorphia". Serletti Aff. ¶40. Gender dysmorphia is a psychological diagnosis and he is not even qualified to make this statement. Additionally, the defendant's expert completely ignores the numerous other mental health conditions that she was diagnosed with at the time, including autism, social phobia, and anxiety. It also completely ignores the age of the patient, the lack of non-surgical interventions utilized, and the standard of care for accepting an adolescent for gender reassignment surgery.

49. For the same reasons, I disagree with defendant's expert opinion that "plaintiff's mother's testimony established her daughter had gender dysmorphia…" Serletti Aff. ¶41. Again, Dr. Serletti is not qualified to make this diagnosis—he is not a psychologist or mental health professional. None of the testimony that he highlights is relevant to the inquiry mandated by the standard of care when a surgeon is deciding whether to accept an adolescent's case for gender reassignment surgery, nor was it available to Dr. Chin at the time of the surgery.

50. I also disagree with defendant's expert that, by not immediately regretting surgery and living for some time after surgery as a male, the patient must have had gender dysmorphia at the time of the surgery. Serletti Aff. ¶42. This is a third time that the defense plastic surgeon expert attempts to improperly make a psychological diagnosis. It also misses the point of this lawsuit. Even if the patient had gender dysmorphia, surgery was not indicated for this patient for many reasons and should have been turned down by Dr. Chin. She had not undergone reversible interventions, had not lived fully and openly as male for at least 1 year and had other mental health conditions which complicate the patient's treatment.

51. I disagree with defendant's expert that hormone therapy was not a prerequisite to undergoing top surgery. Serletti Aff. ¶43. Per the standard of care, a patient seeking to transition should explore non-surgical interventions before undergoing gender reassignment surgery. One of these non-surgical and partially reversible interventions is hormone therapy. The fact that the patient was not open to this intervention should have given Dr. Chin pause and caused him to reject her as a surgical candidate per the standard of care. Simply put, if the patient is not open to hormone therapy, then it raises questions about whether she is sufficiently decided on transitioning permanently. Per the standard of care, less invasive interventions including hormone therapy should be attempted before proceeding with permanent alteration of the patient's anatomy.

52. I disagree with defendant's expert that Dr. Chin properly performed the double mastectomy. Serletti Aff. ¶44. Dr. Chin failed to remove adequate skin and breast tissue, thereby making a revision surgery unavoidable. Dr. Chin failed to remove adequate tissue on the left lower breast on the right side, left excess tissue in the right supraareolar area and excess tissue in the left inferior breast. If Dr. Chin removed the appropriate amount of skin and breast tissue during the initial surgery, the revision surgery would have been avoided. While revision surgery is always a risk, in this case, it could have been avoided if not for the improper surgical technique and judgment of Dr. Chin.

53. I also disagree with plaintiff's expert that Dr. Chin obtained adequate informed consent from the patient's mother prior to surgery. Serletti ¶44. First, as discussed above, consent for gender reassignment surgery is a team effort by both the plastic surgeon and the psychologist. The surgeon must explain the surgical and physical risks; the mental health provider explains the psychological risks, such as the risk that the surgery will not alleviate the gender dysphoria. Yet here, Dr. Chin failed to speak to Dr. Einhorn and failed to include Dr. Einhorn in the two pre-

operative visits. Dr. Chin failed to even speak to Dr. Einhorn about the psychological risks the patient was facing so that he could relay them. While he testified that he discussed the permanency of the procedure with the Ms. Varian, Dr. Chin is not a psychologist or mental health professional and thus lacks the adequate training to inform the patient of the psychological risks associated with the surgery, including the risk that it may not alleviate symptoms of gender dysphoria or resolve issues of misgendering. Consent requires a two-way conversation with the patient regarding their expectations from the surgery, which does not seem to have occurred here. Dr. Chin also failed to appreciate that the mother was only consenting to surgery because she feared that her daughter would commit suicide otherwise, which is a tremendous red flag. It is therefore my opinion that Dr. Chin did not properly obtain informed consent and omitted all psychological risks of the procedure, and also failed to incorporate the mental health provider in the consent discussions which deviated from the standard of care for gender reassignment surgery on a teenager. Additionally, if Dr. Chin contacted plaintiff's psychologist and had sufficient conversations with plaintiff's mother, he would have learned that she only consented to the procedure because Dr. Einhorn told her that her daughter was suicidal. This is yet another reason that he should have declined to perform surgery on Ms. Varian.

54. Predictably, the patient's gender dysphoria did not continue into adulthood. Thus, as a result of the numerous departures from the standard of care by Dr. Chin, as set forth above, the plaintiff Ms. Varian sustained inappropriate and unjustified permanent alteration of her anatomy, as well as the mental distress associated with regret from undergoing the procedure.

55. For the foregoing reasons, the claims against Dr. Chin and Caremount Medical P.C. should not be dismissed.

Dated: January 20, 2024

REDACTED

WORD COUNT CERTIFICATION

Pursuant to 22 NYCRR 202.8-b, I certify that the accompanying Expert Affirmation contains 6,204 words, excluding the caption and signatures. This certificate was prepared in reliance on the word-count function of Microsoft Word, the word-processing system used to prepare this document.

Dated: White Plains, New York
January 22, 2025

Nicole Varisco

NICOLE M. VARISCO, ESQ.